

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

IN THE MATTER OF:

CASE NO. 98:02675-5-ATS
CHAPTER 7

INTERNATIONAL HERITAGE, INC.,
AND INTERNATIONAL HERITAGE
INCORPORATED,

CASE NO. 98:02674-5-ATS
CHAPTER 7

Debtors.

UNITED STATES' MOTION TO QUASH SUBPOENA

The United States of America, by and through the United States Attorney for the Eastern District of North Carolina, respectfully requests that this Court quash the subpoenas issued by Stanley Van Etten, pro se, out of the United States Bankruptcy Court, Eastern District of North Carolina, directed to Michael Delgado, Revenue Agent, I.R.S., directing this federal employee to provide testimony and documents on January 22, 2004 as set forth in the subpoena, copies of which are attached hereto.

Petitioner states that the doctrine of sovereign immunity precludes the enforcement of this subpoena to compel an employee of the United States or any person, because of the person's official status, without first obtaining the required approval. The regulations by which Internal Revenue records and testimony of any Internal Revenue agent are obtained is governed by the provisions of 26 C.F.R. § 301.9000-1.

The subpoena, which appears to seek deposition testimony on January 22, 2004, and documents related to a settlement agreement, should be quashed because, inter alia, Revenue Agent Delgado has not been authorized by the IRS to testify and has no

relevant testimony or documents to provide. Revenue Agent Delgado examined Mr. Van Etten's 1998 federal income tax return, but he has no documents and can offer no testimony relevant to the settlement agreements referred to in the subpoena (apparently a settlement with the Chapter 7 Trustee), the trust fund liability for unpaid employment taxes (assessed pursuant to 26 U.S.C., Section 6672), or the offset of payments at issue between the Chapter 7 Trustee and Mr. Van Etten in this bankruptcy case.

A Memorandum of Law in support of this Motion is attached hereto.

Respectfully submitted, this 21st day of January, 2004.

FRANK D. WHITNEY
United States Attorney

BY: /s/ Neal Fowler
NEAL FOWLER
Assistant United States Attorney
Civil Division
310 New Bern Avenue, Suite 800
Raleigh, NC 27601-1461
Telephone: (919) 856-4049

CERTIFICATE OF SERVICE

I do hereby certify that I have this 21st day of January, 2004, served a copy of the foregoing by placing a copy of the same in the U.S. Mails, addressed as follows:

Stanley H. Van Etten
7924 Broad Street
Raleigh, NC 27613.

/s/ Neal Fowler
Assistant United States Attorney
Civil Division